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6 INTERNATIONAL BUSINESS MACHINES
7 CORPORATION

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 DAVID SWAFFORD,
12 Plaintiff,

13 v.

14 INTERNATIONAL BUSINESS MACHINES
15 CORPORATION,
16 Defendant.

Case No. 5:18-cv-04916-LHK

**DEFENDANT INTERNATIONAL
BUSINESS MACHINES CORPORATION'S
ANSWER AND DEFENSES TO
PLAINTIFF'S AMENDED COMPLAINT**

Am. Complaint Filed: November 2, 2018
Trial Date: December 13, 2019

1 Defendant International Business Machines Corporation (“IBM”), by and through its
 2 undersigned counsel, hereby answers the remaining portions of the Amended Complaint filed by
 3 Plaintiff David Swafford (“Plaintiff”) which were not dismissed by the Court’s April 17, 2019
 4 Order.

5 **INTRODUCTION**

6 1. IBM denies the allegations in Paragraph 1 of Plaintiff’s Amended Complaint.
 7 2. IBM denies the allegations in Paragraph 2 of Plaintiff’s Amended Complaint.
 8 3. IBM denies the allegations in Paragraph 3 of Plaintiff’s Amended Complaint.
 9 4. IBM denies the allegations in Paragraph 4 of Plaintiff’s Amended Complaint.
 10 5. IBM admits that Plaintiff filed this action and seeks damages. IBM denies the
 11 remaining allegations in Paragraph 5 of Plaintiff’s Amended Complaint and denies that Plaintiff
 12 is entitled to any remedy or relief in this action.

13 **PARTIES**

14 6. IBM admits the allegations contained in Paragraph 6 of Plaintiff’s Amended
 15 Complaint.
 16 7. IBM admits the allegations contained in Paragraph 7 of Plaintiff’s Amended
 17 Complaint.

18 **JURISDICTION AND VENUE**

19 8. IBM admits the allegations contained in Paragraph 8 of Plaintiff’s Amended
 20 Complaint.
 21 9. IBM admits the allegations contained in Paragraph 9 of Plaintiff’s Amended
 22 Complaint.
 23 10. IBM admits the allegations contained in Paragraph 10 of Plaintiff’s Amended
 24 Complaint.
 25 11. IBM denies the allegations contained in Paragraph 11 of Plaintiff’s Amended
 26 Complaint.

27 **FACTUAL ALLEGATIONS**

28 12. IBM admits that IBM hired Plaintiff in 2009. IBM lacks sufficient knowledge or

1 information at this time to admit or deny the truth of the remaining allegations in Paragraph
2 12 of Plaintiff's Amended Complaint.

3 13. IBM admits the allegations contained in Paragraph 13 of Plaintiff's Amended
4 Complaint.

5 14. IBM admits that Plaintiff generally received satisfactory performance evaluations
6 and received various internal awards from IBM. IBM denies the remaining allegations in
7 Paragraph 14 of Plaintiff's Amended Complaint.

8 **IBM Promised Mr. Swafford His Commissions Were Uncapped.**

9 15. IBM admits that Plaintiff's compensation as a sales representative consisted of a
10 salary and commissions. IBM admits that in 2016, Plaintiff was paid commissions for his 2016
11 achievement pursuant to the terms of his IPL. IBM denies the remaining allegations in
12 Paragraph 15 of Plaintiff's Amended Complaint.

13 16. IBM admits that PowerPoints and other educational materials were available
14 which discussed some of IBM's policies and procedures applicable to the payment of
15 commissions. IBM denies the remaining allegations in Paragraph 16 of Plaintiff's Amended
16 Complaint.

17 17. IBM admits the Plaintiff's IPL for the second half of 2016 ran from July 1, 2016
18 to December 31, 2016. IBM denies the remaining allegations in Paragraph 17 of Plaintiff's
19 Amended Complaint.

20 18. IBM admits that PowerPoints and other educational materials were available
21 which discussed some of IBM's policies and procedures applicable to the payment of
22 commissions. IBM denies the remaining allegations in Paragraph 18 of Plaintiff's Amended
23 Complaint.

24 19. IBM admits that a variety of PowerPoints were available to salespeople on IBM's
25 Incentives Workplace. IBM further admits that PowerPoints and other educational materials
26 were available which discussed some of IBM's policies and procedures applicable to the
27 payment of commissions. IBM denies the remaining allegations in Paragraph 19 of Plaintiff's
28 Amended Complaint.

1 20. IBM denies the allegations in Paragraph 20 of Plaintiff's Amended Complaint.

2 21. IBM denies the allegations in Paragraph 21 of Plaintiff's Amended Complaint.

3 Furthermore, the Court dismissed claims based upon the statements of IBM managers at sales
4 meetings in its April 17, 2019 Order. Accordingly, no response is required to the allegations in
5 Paragraph 21 of Plaintiff's Amended Complaint related to statements by IBM managers at sales
6 meetings.

7 22. IBM admits that it informs managers not to make adjustments to commissions
8 only as a ceiling or cap on the total earnings allowable to employees. IBM denies the remaining
9 allegations in Paragraph 22 of Plaintiff's Amended Complaint.

10 23. IBM admits that commissions may be adjusted to correct errors and that it
11 informs managers not to make adjustments to commissions only as a ceiling or cap on the total
12 earnings allowable to employees. IBM denies the remaining allegations in Paragraph 23 of
13 Plaintiff's Amended Complaint.

14 24. IBM denies the allegations in Paragraph 24 of Plaintiff's Amended Complaint.

15 **Mr. Swafford's Commission Payments Were Capped.**

16 25. IBM admits that in 2016, Plaintiff worked on deals for IBM's customers, Oracle
17 and Sabre, Inc. IBM denies the remaining allegations in Paragraph 25 of Plaintiff's Amended
18 Complaint.

19 26. IBM admits that the achievement attributable to Plaintiff during the second half
20 of 2016, including the Oracle and Sabre deals was approximately \$4,983,275, and that Plaintiff's
21 quota for the second half of 2016 was \$512,600. IBM denies the remaining allegations in
22 Paragraph 26 of Plaintiff's Amended Complaint.

23 27. IBM denies the allegations in Paragraph 27 of Plaintiff's Amended Complaint.

24 28. IBM admits that Plaintiff's commission payments were reviewed pursuant to the
25 terms of his IPL. IBM denies the remaining allegations in Paragraph 28 of the Amended
26 Complaint.

27 29. IBM denies the allegations in Paragraph 29 of Plaintiff's Amended Complaint.

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1 30. Answering Paragraph 30 of Plaintiff's Amended Complaint, IBM states that the
2 email attached to Plaintiff's Amended Complaint as Exhibit A speaks for itself. IBM denies
3 the remaining allegations in Paragraph 30 of the Amended Complaint.

4 31. IBM denies the allegations in Paragraph 31 of Plaintiff's Amended Complaint.

5 32. IBM lacks sufficient knowledge or information at this time to admit or deny the
6 truth of the allegation in Paragraph 32 of Plaintiff's Amended Complaint.

7 33. IBM admits that Plaintiff's commission payments were reviewed pursuant to the
8 terms of his IPL and that Plaintiff was paid commission payments in 2016. IBM denies the
9 remaining allegations in Paragraph 33 of the Amended Complaint.

10 34. IBM admits that Plaintiff was paid commission payments in 2016. IBM denies
11 the remaining allegations in Paragraph 34 of Plaintiff's Amended Complaint.

12 35. IBM denies the allegations in Paragraph 35 of Plaintiff's Amended Complaint.

13 36. Answering Paragraph 36 of Plaintiff's Amended Complaint, IBM states that the
14 email attached to Plaintiff's Amended Complaint as Exhibit B speaks for itself. IBM denies
15 the remaining allegations in Paragraph 36 of the Amended Complaint.

16 37. IBM denies the allegations in Paragraph 37 of Plaintiff's Amended Complaint.

17 38. IBM denies the allegations in Paragraph 38 of Plaintiff's Amended Complaint.

18 **Mr. Swafford Has Recently Learned That IBM Routinely Misrepresents That It Does Not**
19 **Cap Commissions**

20 39. IBM denies the allegations in Paragraph 39 of Plaintiff's Amended Complaint.

21 40. IBM denies the allegations in Paragraph 40 of Plaintiff's Amended Complaint.

22 41. IBM admits that the case *Bobby Choplin v. International Business Machines Corporation*,
23 No. 16-cv-1412-TDS-JEP was resolved at the time Plaintiff filed his Amended Complaint.
24 IBM further admits that Plaintiff and Bobby Choplin both had IPLs which contained
25 disclaimers explaining, among other things, IBM's right to review and adjust commissions.
26 IBM denies the remaining allegations in Paragraph 41 of Plaintiff's Amended Complaint.

27 42. IBM admits only that the plaintiff in the Choplin Action took four depositions:
28 (1) a Rule 30(b)(6) deposition of IBM through corporate designee Richard Martinotti (the

1 transcript of which is attached as Exhibit C to Plaintiff's Amended Complaint); (2) a deposition
2 of Mr. Choplin's first-line manager, Tom Batthany (the transcript of which is attached as
3 Exhibit D to Plaintiff's Amended Complaint); (3) a deposition of Mr. Choplin's second-line
4 manager, Haleh Maleki (the transcript of which is attached as Exhibit E to Plaintiff's Amended
5 Complaint); and (4) a deposition of Mark Dorsey, a former IBM Vice President of Software
6 Sales (the transcript of which is attached as Exhibit F to Plaintiff's Amended Complaint). The
7 deposition testimony in that case speaks for itself. IBM denies the remaining allegations in
8 Paragraph 42 of the Amended Complaint.

9 43. Answering Paragraph 43 and its subparts, IBM states that the deposition
10 testimony speaks for itself. Moreover, Plaintiff is taking the cited testimony out of context,
11 Plaintiff is misconstruing that testimony, and Plaintiff improperly relies on this testimony in
12 support of his claims. IBM denies the remaining allegations in Paragraph 43 of Plaintiff's
13 Amended Complaint, including all subparts.

14 44. Answering Paragraph 44 of Plaintiff's Amended Complaint, IBM states that the
15 deposition testimony and emails referenced by Plaintiff speak for themselves. Moreover,
16 Plaintiff is taking the testimony and emails out of context, Plaintiff is misconstruing the
17 testimony and emails, and Plaintiff improperly relies on this testimony and emails in support
18 of his claims in this case. IBM denies the remaining allegations in Paragraph 44 of Plaintiff's
19 Amended Complaint.

20 45. Answering Paragraph 45 of Plaintiff's Amended Complaint, IBM states that the
21 email attached as Exhibit G to Plaintiff's Amended Complaint speaks for itself. Moreover,
22 Plaintiff is taking the testimony and emails out of context, Plaintiff is misconstruing the
23 testimony and emails, and Plaintiff improperly relies on this testimony and emails in support
24 of his claims in this case. IBM denies the remaining allegations in Paragraph 45 of Plaintiff's
25 Amended Complaint.

26 46. Answering Paragraph 46 of Plaintiff's Amended Complaint, IBM states that the
27 deposition testimony speaks for itself. Moreover, Plaintiff is taking the cited testimony out of
28 context, Plaintiff is misconstruing that testimony, and Plaintiff improperly relies on this

1 testimony in support of his claims. IBM denies the remaining allegations in Paragraph 46 of
2 Plaintiff's Amended Complaint.

3 47. IBM denies the allegations in Paragraph 47 of Plaintiff's Amended Complaint.

4 48. Answering Paragraph 48 and its subparts, IBM states that the deposition
5 testimony speaks for itself. Moreover, Plaintiff is taking the cited testimony out of context,
6 Plaintiff is misconstruing that testimony, and Plaintiff improperly relies on this testimony in
7 support of his claims. IBM denies the remaining allegations in Paragraph 48 of Plaintiff's
8 Amended Complaint, including all subparts.

9 49. Answering Paragraph 49 and its subparts, IBM states that the deposition
10 testimony speaks for itself. Moreover, Plaintiff is taking the cited testimony out of context,
11 Plaintiff is misconstruing that testimony, and Plaintiff improperly relies on this testimony in
12 support of his claims. IBM denies the remaining allegations in Paragraph 49 of Plaintiff's
13 Amended Complaint, including all subparts.

14 50. Answering Paragraph 50 of Plaintiff's Amended Complaint, IBM states that the
15 deposition testimony speaks for itself. Moreover, Plaintiff is taking the cited testimony out of
16 context, Plaintiff is misconstruing that testimony, and Plaintiff improperly relies on this
17 testimony in support of his claims. IBM denies the remaining allegations in Paragraph 50 of
18 Plaintiff's Amended Complaint.

19 51. Answering Paragraph 51 of Plaintiff's Amended Complaint, IBM states that the
20 deposition testimony speaks for itself. Moreover, Plaintiff is taking the cited testimony out of
21 context, Plaintiff is misconstruing that testimony, and Plaintiff improperly relies on this
22 testimony in support of his claims. IBM denies the remaining allegations in Paragraph 51 of
23 Plaintiff's Amended Complaint.

24 52. Answering Paragraph 52 of Plaintiff's Amended Complaint, IBM states that the
25 email attached as Exhibit H to Plaintiff's Amended Complaint speaks for itself. IBM denies
26 the remaining allegations in Paragraph 52 of Plaintiff's Amended Complaint.

27 53. IBM denies the allegations in Paragraph 53 of Plaintiff's Amended Complaint.

28 **FIRST CLAIM FOR RELIEF**

(Violations of California Labor Code)

54. The Court dismissed this claim in its April 17, 2019 Order. Therefore, IBM need not respond to the allegations contained in this Paragraph.

55. The Court dismissed this claim in its April 17, 2019 Order. Therefore, IBM need not respond to the allegations contained in this Paragraph.

56. The Court dismissed this claim in its April 17, 2019 Order. Therefore, IBM need not respond to the allegations contained in this Paragraph.

57. The Court dismissed this claim in its April 17, 2019 Order. Therefore, IBM need not respond to the allegations contained in this Paragraph.

58. The Court dismissed this claim in its April 17, 2019 Order. Therefore, IBM need not respond to the allegations contained in this Paragraph.

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65. The Court dismissed this claim in its April 17, 2019 Order. Therefore, IBM need not respond to the allegations contained in this Paragraph.

66. The Court dismissed this claim in its April 17, 2019 Order. Therefore, IBM need not respond to the allegations contained in this Paragraph.

67. The Court dismissed this claim in its April 17, 2019 Order. Therefore, IBM need not respond to the allegations contained in this Paragraph.

SECOND CLAIM FOR RELIEF
(Violation of the California Unfair Competition Law)

68. IBM reasserts and incorporates its answers to Paragraphs 1 through 67 of Plaintiff's Amended Complaint as though fully restated herein.

69. IBM denies the allegations in Paragraph 69 of Plaintiff's Amended Complaint.

70. IBM states that California Business and Professions Code § 17200 speaks for itself. IBM denies the remaining allegations in Paragraph 70 of Plaintiff's Amended Complaint.

71. IBM denies the allegations in Paragraph 71 of Plaintiff's Amended Complaint and its subparts.

72. IBM denies the allegations in Paragraph 72 of Plaintiff's Amended Complaint.

73. IBM denies the allegations in Paragraph 73 of Plaintiff's Amended Complaint.

74. IBM denies the allegations in Paragraph 74 of Plaintiff's Amended Complaint.

75. IBM denies the allegations in Paragraph 75 of Plaintiff's Amended Complaint.

76. IBM admits that Plaintiff purports to seek to enjoin conduct by IBM. IBM denies Plaintiff is entitled to any remedy or relief in this action under any of his claims.

77. IBM admits that Plaintiff seeks the relief set forth in Paragraph 77 of his Amended Complaint. IBM denies Plaintiff is entitled to any remedy or relief in this action under any of his claims.

THIRD CLAIM FOR RELIEF
(Fraudulent Misrepresentation)

78. IBM reasserts and incorporates its answers to Paragraphs 1 through 77 of Plaintiff's Amended Complaint as though fully restated herein.

79. IBM denies the allegations in Paragraph 79 of Plaintiff's Amended Complaint. IBM further states that the Court dismissed claims based upon the statements of executives and managers made at sales meetings in its April 17, 2019 Order. Accordingly, no response is required to the allegations in Paragraph 79 of the Amended Complaint.

1 80. IBM denies the allegations in Paragraph 80 of Plaintiff's Amended Complaint.

2 81. IBM denies the allegations in Paragraph 81 of Plaintiff's Amended Complaint.

3 IBM further states that the Court dismissed claims based upon the statements of executives
4 and managers made at sales meetings in its April 17, 2019 Order. Accordingly, no response is
5 required to the allegations in Paragraph 81 of the Amended Complaint.

6 82. IBM denies the allegations in Paragraph 82 of Plaintiff's Amended Complaint.

7 83. IBM denies the allegations in Paragraph 83 of Plaintiff's Amended Complaint.

8 IBM further states that the Court dismissed claims based upon the statements of executives
9 and managers made at sales meetings in its April 17, 2019 Order. Accordingly, no response is
10 required to the allegations in Paragraph 83 of the Amended Complaint.

11 84. IBM denies the allegations in Paragraph 84 of Plaintiff's Amended Complaint.

12 85. IBM denies the allegations in Paragraph 85 of Plaintiff's Amended Complaint.

13 86. IBM denies the allegations in Paragraph 86 of Plaintiff's Amended Complaint.

14 **FOURTH CLAIM FOR RELIEF**

15 **(Alternative Claim – Negligent Misrepresentation)**

16 87. IBM reasserts and incorporates its answers to Paragraphs 1 through 86 of
17 Plaintiff's Amended Complaint as though fully restated herein.

18 88. Answering Paragraph 88 of Plaintiff's Amended Complaint, IBM acknowledges
19 that Plaintiff purports to bring a claim for negligent misrepresentation in the alternative to his
20 third claim. IBM denies Plaintiff is entitled to any remedy or relief in this action under any of
21 his claims.

22 89. IBM denies the allegations in Paragraph 89 of Plaintiff's Amended Complaint.

23 IBM further states that the Court dismissed claims based upon the statements of executives
24 and managers made at sales meetings in its April 17, 2019 Order. Accordingly, no response is
25 required to the allegations in Paragraph 89 of the Amended Complaint.

26 90. IBM denies the allegations in Paragraph 90 of Plaintiff's Amended Complaint.

27 IBM further states that the Court dismissed claims based upon the statements of executives
28

1 and managers made at sales meetings in its April 17, 2019 Order. Accordingly, no response is
2 required to the allegations in Paragraph 90 of the Amended Complaint.

3 91. IBM denies the allegations in Paragraph 91 of Plaintiff's Amended Complaint.
4 IBM further states that the Court dismissed claims based upon the statements of executives
5 and managers made at sales meetings in its April 17, 2019 Order. Accordingly, no response is
6 required to the allegations in Paragraph 91 of the Amended Complaint.

7 92. IBM denies the allegations in Paragraph 92 of Plaintiff's Amended Complaint.

8 93. IBM denies the allegations in Paragraph 93 of Plaintiff's Amended Complaint.

9 94. IBM denies the allegations in Paragraph 94 of Plaintiff's Amended Complaint.

10 95. Answering Paragraph 95 of Plaintiff's Amended Complaint, IBM admits that it
11 had an obligation to provide Plaintiff with accurate information regarding his compensation.
12 IBM further states that it complied with its obligations to provide Plaintiff with accurate
13 information regarding his compensation by, among other things, providing him with detailed
14 IPLs outlining the terms of his commission payments. IBM denies any implication that it did
15 not comply with any obligation to provide Plaintiff with accurate information regarding
16 compensation and denies the remaining allegations contained in Paragraph 95 of Plaintiff's
17 Amended Complaint.

18 96. IBM denies the allegations in Paragraph 96 of Plaintiff's Amended Complaint.

19 97. IBM denies the allegations in Paragraph 97 of Plaintiff's Amended Complaint.

20 98. IBM denies the allegations in Paragraph 98 of Plaintiff's Amended Complaint.

21 **FIFTH CLAIM FOR RELIEF**
22 **(Alternative Claim – Quantum Meruit)**

23 99. IBM reasserts and incorporates its answers to Paragraphs 1 through 98 of
24 Plaintiff's Amended Complaint as though fully restated herein.

25 100. IBM denies the allegations in Paragraph 100 of Plaintiff's Amended Complaint.

26 101. IBM denies the allegations in Paragraph 101 of Plaintiff's Amended Complaint.

27 102. IBM denies the allegations in Paragraph 102 of Plaintiff's Amended Complaint.

28 **SIXTH CLAIM FOR RELIEF**

(Unjust Enrichment)

103. IBM reasserts and incorporates its answers to Paragraphs 1 through 102 of Plaintiff's Amended Complaint as though fully restated herein.

104. IBM denies the allegations in Paragraph 104 of Plaintiff's Amended Complaint.

105. IBM denies the allegations in Paragraph 105 of Plaintiff's Amended Complaint.

106. IBM denies the allegations in Paragraph 106 of Plaintiff's Amended Complaint.

107. IBM denies the allegations in Paragraph 107 of Plaintiff's Amended Complaint.

108. IBM denies the allegations in Paragraph 108 of Plaintiff's Amended Complaint.

SEVENTH CLAIM FOR RELIEF
(Punitive Damages)

109. IBM reasserts and incorporates its answers to Paragraphs 1 through 108 of Plaintiff's Amended Complaint as though fully restated herein.

110. IBM denies the allegations in Paragraph 110 of Plaintiff's Amended Complaint.

111. IBM denies the allegations in Paragraph 111 of Plaintiff's Amended Complaint.

112. IBM denies the allegations in Paragraph 112 of Plaintiff's Amended Complaint.

PRAYER FOR RELIEF

IBM denies that Plaintiff is entitled to any relief sought in his Prayer for Relief including subparagraphs 1 through 8, or to any relief whatsoever.

JURY DEMAND

IBM admits Plaintiff demands a trial by jury but denies Plaintiff is entitled to any remedy or relief in this action.

GENERAL DENIAL

IBM denies every allegation of the Amended Complaint not expressly admitted in this Answer.

AFFIRMATIVE AND OTHER DEFENSES¹

In addition to the foregoing admissions and denials, IBM asserts the following defenses.

¹ By pleading any matter as a defense, IBM does not concede that it bears the burden of proof with regard to such matter.

1 The factual bases for the following defenses are set forth in further detail in the foregoing
2 responses to the allegations contained in the Complaint, which are re-alleged and incorporated
3 herein by reference.

4 **FIRST DEFENSE**

5 As set forth in IBM's Motion to Dismiss Plaintiff's Amended Complaint, Plaintiff's
6 Amended Complaint fails, in whole or in part, to state claims for which relief can be granted.

7 **SECOND DEFENSE**

8 Plaintiff's claims are barred, in whole or in part, because IBM has, at all times, acted
9 reasonably and in good faith. IBM engaged in good faith efforts to comply with all federal and
10 state laws and, therefore, cannot be held liable for punitive damages, liquidated damages, or
11 costs of litigation, including attorney's fees.

12 **THIRD DEFENSE**

13 Plaintiff's claims are barred, in whole or in part, by the doctrines of unclean hands and
14 estoppel.

15 **FOURTH DEFENSE**

16 Plaintiff's claims are barred, in whole or in part, because IBM had and retained the sole
17 and unlimited discretion to determine and adjust any commission payments made to Plaintiff.

18 **FIFTH DEFENSE**

19 Plaintiff's Amended Complaint fails to state any fact that would entitle Plaintiff to
20 recovery of any punitive damages, compensatory damages, attorneys' fees, or costs from IBM.

21 **SIXTH DEFENSE**

22 Plaintiff's claims are barred pursuant to the United States Constitution and the
23 California Constitution to the extent provisions of the California Labor Code impose double
24 penalties and violate the due process rights of Defendant.
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SEVENTH DEFENSE

Plaintiff's claim for punitive damages is in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States in that it deprives Defendant of property without due process of law; further, the claim for punitive damages is violative of the Fourteenth Amendment of the Constitution of the United States concerning Equal Protection; further said claim is violative of the provisions of the California Constitution in denying equal protection and in depriving Defendant of property without due process of law; and the punitive damages claim is further in violation of the Eighth Amendment of the Constitution of the United States and in violation of the California Constitution prohibiting the imposition of excessive fines.

EIGHTH DEFENSE

Plaintiff's claims fail, in whole or in part, because IBM notified Plaintiff clearly and in writing of its policies and practices concerning the calculation of commissions and when such commissions were earned, in compliance with California law.

NINTH DEFENSE

Plaintiff's claims fail because IBM paid Plaintiff all compensation owed to Plaintiff.

TENTH DEFENSE

Plaintiff's Amended Complaint as a whole, and each purported cause of action therein, are barred to the extent that it was not filed within the applicable statutes of limitation, including, but not limited to California Code of Civil Procedure §§ 338(a), 339, and 343.

ELEVENTH DEFENSE

To the extent Plaintiff seeks statutory penalties for alleged willful failure to comply with the requirements of the California Labor Code, such penalties are barred or must be reduced

1 because IBM did not willfully, knowingly, and intentionally violate the requirements of the
2 California Labor Code.

3 TWELFTH DEFENSE

4
5 Plaintiff's claims under Business and Professions Code Section 17200, *et seq.* are barred
6 to the extent he lacks standing to sue pursuant to Business and Professions Code Sections
7 17203 and 17204, because Plaintiff has not demonstrated any fact beyond a simple recitation
8 of the legal elements of the claims.

9 THIRTEENTH DEFENSE

10
11 IBM alleges that the Amended Complaint, and each alleged cause of action therein, is
12 barred in whole or in part by Sections 2854, 2856, 2858, and 2859 of the California Labor Code,
13 respectively, because Plaintiff failed to: (1) use ordinary care and diligence in the performance
14 of his duties, (2) comply substantively with the reasonable directions of his employer, (3)
15 exercise a reasonable degree of skill in performing his duties, and (4) perform his job duties in
16 a proper and skillful manner.

17 FOURTEENTH DEFENSE

18
19 IBM reserves the right to add any defenses, affirmative defenses, or counter claims as
20 appropriate under the applicable rules.

21
22 **WHEREFORE**, having fully answered the Amended Complaint, IBM respectfully
23 requests:

- 24 1. Plaintiff have and recover nothing of IBM by way of this action;
- 25 2. Judgment be entered in favor of IBM for all costs and attorneys' fees incurred
- 26 in the defense of this action; and
- 27 3. IBM have and recover such other and further relief as this Court may deem
- 28

1 just and proper.
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4 Dated: May 1, 2019

JACKSON LEWIS P.C.

5 By: /s/ Tyler A. Brown
6 Tyler A. Brown
7 Justin Barnes (*pro hac vice*)
8 Attorneys for Defendant
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